



MEMORANDUM TO CLIENTS

TO: Clients

FROM: Immigration Team

DATE: February 14, 2025

RE: I-9 Compliance for Companies Employing U.S. Workers

Overview of Form I-9 and Its Purpose

Form I-9, Employment Eligibility Verification, is a mandatory document that all U.S. employers must complete for each employee hired after November 6, 1986. This requirement applies to U.S. citizens, lawful permanent residents, and nonimmigrants authorized to work in the United States. The purpose of Form I-9 is to verify an employee's identity and employment authorization in the United States while ensuring compliance with federal employment eligibility laws.

I. AGENCIES RESPONSIBLE FOR ENFORCEMENT

The enforcement of Form I-9 regulations falls under the jurisdiction of the following agencies:

- **U.S. Citizenship and Immigration Services (USCIS):** Oversees the issuance and updates to Form I-9 and provides guidance on its completion.
- **Immigration and Customs Enforcement (ICE):** Conducts audits and investigations into employer compliance with Form I-9 regulations and imposes penalties for violations.
- **Department of Justice's Immigrant and Employee Rights Section (IER):** Enforces anti-discrimination provisions related to employment eligibility verification.

II. PENALTIES FOR NON-COMPLIANCE

Failure to comply with Form I-9 requirements can result in significant penalties, including:

- Paperwork Violations: Fines range from \$281 to \$2,789 per Form I-9 with errors.
- Knowingly Employing Unauthorized Workers:
 - First offense: \$698 to \$5,579 per violation
 - Second offense: \$5,579 to \$13,946 per violation
 - Third or more offenses: \$8,369 to \$27,894 per violation
- Discriminatory or Unfair Practices: Fines range from \$230 to \$23,048 per violation, depending on the severity and frequency.
- Failure to Notify DHS of Continuing Employment After Final Nonconfirmation (E-Verify Employers): \$973 to \$1,942 per employee.
- Criminal Penalties: Employers engaged in a pattern or practice of knowingly hiring unauthorized workers may face fines and/or imprisonment of up to six months.

III. GUIDANCE FOR ENSURING I-9 COMPLIANCE

To avoid severe financial penalties, legal consequences and potential criminal liability, U.S. employers must adhere to the following mandatory I-9 compliance procedures:

1. Timely Completion
 - Employees must complete Section 1 no later than the first day of employment along with all other required onboarding documents.
 - Employers must review and complete Section 2 within three business days of the employee's start date, ensuring that identity verification and Form I-9 completion are conducted alongside all other onboarding procedures.
2. Employee Handbook & Work Authorization Compliance Statement
 - All U.S. employers with four or more employees must create and maintain specific employer policies, typically found in an employee

handbook, which outlines workplace policies, including compliance with work authorization requirements.

- All Employers in the United States must have a written policy detailing how they ensure I-9 compliance within their company.
- The written policy must include a clear statement regarding the employer's adherence to Form I-9 compliance and a basic explanation for this process, emphasizing the requirement for employees to provide valid work authorization documents.
- Employers should also provide training for HR personnel to ensure consistent application of I-9 procedures and avoid any discriminatory practices in the hiring process.

3. Proper Document Verification

- Accept only original, unexpired documents from the Lists of Acceptable Documents and verify them in compliance with federal guidelines.
- Do not request additional or specific documents from employees, as this may constitute document abuse. Employers should ensure that all verification procedures are uniformly applied across all employees to avoid discrimination claims.
- Employers must review documents in good faith, ensuring they appear genuine and relate to the employee. For remote employees, employers may either
 - a. use an authorized representative for verification or
 - b. follow the E-Verify remote document verification process. Being registered with E-Verify is a requirement for this option.

4. Retention and Storage

- Retain Form I-9 for three years after the hire date or one year after termination, whichever is later. This is a legal requirement for all U.S. employers, and failure to comply can result in fines and legal consequences.
- Maintain forms in a secure and organized system, either electronically or in paper format, ensuring they are readily accessible in case of an audit or inspection by federal authorities.

- If using an electronic I-9 system, ensure it meets federal compliance standards and allows for proper tracking, retention, and retrieval of records as required by law.

5. E-Verify Compliance

- Employers enrolled in E-Verify must submit verification requests within three business days of an employee's start date. Failure to comply with this timeline may result in federal penalties and legal action.
- It is strongly recommended that all employers register for E-Verify to enhance compliance and reduce the risk of hiring unauthorized workers.
- Employees who receive a Tentative Nonconfirmation (TNC) must be given an opportunity to resolve the issue. If an employer continues employment after a Final Nonconfirmation (FNC) without proper resolution, they may face penalties.

A. Mandatory E-Verify States and Conditions

E-Verify is mandatory for certain employers in 22 states for either all employers or specific sectors. The following states have different requirements:

- States Requiring E-Verify for All Employers:
 - Alabama, Arizona, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Utah (with some exemptions for small businesses).
- States Requiring E-Verify for Public Employers and Contractors:
 - Colorado, Florida, Idaho, Indiana, Michigan, Missouri, Nebraska, Oklahoma, Texas, Virginia, and West Virginia.
- States Requiring E-Verify for Certain Public Contractors and Subcontractors:
 - Minnesota and Pennsylvania.

Failure to comply with E-Verify requirements in these states can result in penalties, including loss of business licenses and fines. Employers operating in these states

must ensure full compliance with E-Verify requirements to avoid enforcement actions. See Appendix A for additional information on the states' requirements.

B. Conducting an Internal I-9 Audit

To ensure ongoing compliance, employers should perform periodic internal audits of Form I-9 records. The following steps can help facilitate a structured and non-discriminatory audit process:

i. Determine Audit Scope

- Review all Forms I-9 or a neutral, non-discriminatory sample.

ii. Identify and Correct Errors

- Section 1 Errors: Must be corrected by the employee, who should initial and date changes.
- Sections 2 and 3 Errors: Must be corrected by the employer, who should initial and date changes.
- Missing Forms: If an I-9 is missing, complete a new Form I-9 immediately and attach an explanation.
 - Employers may not backdate corrections or create new forms with altered start dates.

iii. Ensure Compliance with Current Regulations

- Use the most recent version of Form I-9.
- Confirm that all documents presented were valid at the time of verification.

iv. Document the Audit Process

- Maintain records of corrections and explanations for discrepancies.
- Provide written communication to employees regarding any issues identified in their Forms I-9.

v. Implement Training and Ongoing Monitoring

- Regularly train HR personnel on I-9 compliance.
 - Monitor updates from USCIS, ICE, and DHS regarding Form I-9 regulations.
 - Ensure HR staff are aware of anti-discrimination laws and avoid over-documentation requests.
-

IV. BEST PRACTICES RECOMMENDATIONS

To strengthen compliance and mitigate risks, we strongly recommend implementing the following best practices:

1. Proactive Registration with E-Verify

- Even in states where E-Verify is not mandatory, employers should register with E-Verify to ensure compliance with federal and state requirements and enhance workforce verification procedures.

2. Remote Employee Compliance

- Employers hiring remote employees must implement a structured and consistent verification process, either using an authorized representative or the E-Verify remote document verification process.
 - An authorized representative is any individual designated by the employer to complete Section 2 of Form I-9 on their behalf. This can include notaries, attorneys, HR personnel, or other third-party agents. Employers remain liable for any errors or omissions made by the authorized representative in the verification process.
- Employers should conduct periodic audits to ensure ongoing compliance and accuracy of work authorization records for remote employees.

3. Completion of Onboarding Before First Day

- Employers should establish a set internal process requiring the completion of all onboarding documentation, including Form I-9, before the first day of employment where permissible by law.

- This requirement should be clearly stated in the applicable employee handbook to ensure consistency and compliance across all hiring processes.

By implementing these best practices, employers can proactively minimize compliance risks, strengthen hiring procedures, and demonstrate good faith efforts to comply with federal and state regulations.

CONCLUSION

Strict compliance with Form I-9 requirements is mandatory for all U.S. employers and essential to prevent substantial financial penalties, government audits, and potential legal proceedings. Employers must go beyond basic compliance by incorporating proactive measures to strengthen their internal processes and mitigate legal and operational risks. This includes regularly reviewing I-9 practices, ensuring proper document retention in accordance with federal regulations, and implementing clear policies in the employee handbook that outline work authorization verification requirements.

We highly recommend that employers register for E-Verify, even in states where it is not mandatory, as doing so streamlines the verification process and enhances workforce compliance. Those hiring remote employees must implement a structured verification process using an authorized representative or the E-Verify remote document verification process to ensure compliance with employment eligibility verification requirements. Additionally, conducting periodic internal I-9 audits allows employers to identify and correct errors before regulatory scrutiny, reducing the risk of enforcement actions. Furthermore, because I-9 verification compliance procedures/requirements are subject to change, HR personnel must also receive regular training on I-9 compliance to ensure consistency, avoid discriminatory practices, and maintain uniform verification procedures across all employees.

Failure to properly implement I-9 and E-Verify requirements exposes an organization to financial, operational, and legal consequences, including potential fines, penalties, and business license suspensions. By adopting the best practices outlined in this memo, employers can demonstrate good faith compliance with federal and state laws, significantly reducing exposure to liability and ensuring a legally authorized workforce.

If you have any questions or require assistance with I-9 compliance, audits, or legal guidance, please contact our office.

Appendix A

State E-Verify Requirements Chart

State	Requirement Type	Summary of E-Verify Requirements	Bill(s)	State Code Section
Alabama	All Employers	Required for all employers, public and private.	H 56 (2011), H 658 (2012)	Ala. Code § 31-13-15
Alaska	No Requirement	No state-level E-Verify requirement.	N/A	N/A
Arizona	All Employers	Mandated for all employers and contractors.	H 2779 (2007), H 2745 (2008)	Ariz. Rev. Stat. § 23-214
Arkansas	No Requirement	No state-level E-Verify requirement.	N/A	N/A
California	No Requirement	State law prohibits state/local mandates requiring E-Verify for private employers.	N/A	Cal. Lab. Code § 2812
Colorado	Public Employers & Contractors	Requires state agencies and contractors to use E-Verify; alternative compliance program available.	H 1343 (2006), S 139 (2008), S 193 (2008)	Colo. Rev. Stat. § 8-17.5-101
Connecticut	No Requirement	No state-level E-Verify requirement.	N/A	N/A
Delaware	No Requirement	No state-level E-Verify requirement.	N/A	N/A
Florida	All Employers (with exemptions)	As of 2023, requires private employers with 25+ employees to use E-Verify.	EO 11-02 (2011), EO 11-116 (2023)	Fla. Stat. § 448.095
Georgia	All Employers (with exemptions)	Requires private businesses with more than 10 employees to use E-Verify.	S 529 (2006), H 2 (2009), S 447 (2010), H 87 (2011)	Ga. Code Ann. § 13-10-91
Hawaii	No Requirement	No state-level E-Verify requirement.	N/A	N/A

Idaho	Public Employers & Contractors	Mandates E-Verify for state agencies and public contractors receiving state or federal funds.	EO 09-10 (2009)	Idaho Code § 67-7903
Illinois	No Requirement	State law prohibits mandatory E-Verify for private employers.	N/A	820 ILCS 55/12
Indiana	Public Employers & Contractors	Requires government agencies and contractors to use E-Verify; offers a state tax credit incentive for private employers.	S 590 (2011), H 1019 (2015)	Ind. Code § 22-5-1.7-3
Iowa	No Requirement	No state-level E-Verify requirement.	N/A	N/A
Kansas	No Requirement	No state-level E-Verify requirement.	N/A	N/A
Kentucky	No Requirement	No state-level E-Verify requirement.	N/A	N/A
Louisiana	All State Contractors	All state contractors must use E-Verify; private employers must either use E-Verify or retain work authorization documents.	H 342 (2011), H 646 (2011), H 996 (2012)	La. Rev. Stat. § 23:995
Maine	No Requirement	No state-level E-Verify requirement.	N/A	N/A
Maryland	No Requirement	No state-level E-Verify requirement.	N/A	N/A
Massachusetts	No Requirement	No state-level E-Verify requirement.	N/A	N/A
Michigan	Public Contractors	Requires contractors and subcontractors of the state HHS and DOT to use E-Verify.	H 5365 (2012)	Mich. Comp. Laws § 408.435
Minnesota	Public Contractors	Vendors and subcontractors with contracts exceeding \$50,000 must use E-Verify.	11-3590 (2011)	Minn. Stat. § 16C.285
Mississippi	All Employers	Mandates E-Verify for all employers, contractors, and	S 2988 (2008)	Miss. Code Ann. § 71-11-3

		subcontractors.		
Missouri	Public Employers & Contractors	Requires public employers, contractors, and subcontractors to use E-Verify.	H 1549 (2008), H 390 (2009)	Mo. Rev. Stat. § 285.530
Nebraska	Public Employers & Incentive-Based Businesses	Mandates E-Verify for public employers, contractors, and businesses qualifying for state tax incentives.	L 403 (2009)	Neb. Rev. Stat. § 4-108
North Carolina	Employers with 25+ Employees	Requires all counties, cities, and private employers with more than 25 employees to use E-Verify; seasonal workers excluded.	S 1523 (2006), H 36 (2011), H 786 (2013)	N.C. Gen. Stat. § 64-26
Oklahoma	Public Employers & Contractors	Requires state agencies, contractors, and subcontractors to use E-Verify.	H 1804 (2007)	Okla. Stat. tit. 25, § 1313
Pennsylvania	Public Contractors	Public works contractors and subcontractors must use E-Verify.	S 637 (2012)	43 Pa. Cons. Stat. § 167.3
South Carolina	All Employers	Mandatory for all employers.	H 4400 (2008), S 20 (2011), H 4813 (2012)	S.C. Code Ann. § 41-8-10
Tennessee	Employers with 6+ Employees	Employers must use E-Verify or request valid state ID from employees.	H 1378 (2011)	Tenn. Code Ann. § 50-1-703
Texas	State Agencies	Required for all state agencies.	S 374 (2015)	Tex. Gov't Code § 673.001
Utah	Public & Private Employers	Public employers and private businesses with 15+ employees must use E-Verify.	S 81 (2008), S 39 (2009), S 251 (2010), H 116(2011)	Utah Code Ann. § 13-47-201
Virginia	Public Employers & Contractors	Requires state agencies and public contractors with 50+ employees to use E-Verify.	H 737 (2010), H 1859 (2011), S 1049 (2011)	Va. Code Ann. § 2.2-4308
West Virginia	Public Employers	Mandates E-Verify for public	S 659 (2012)	W. Va. Code § 21-

	& Contractors	employers and contractors.		1B-1
--	---------------	----------------------------	--	------

Employers operating in the states with E-Verify requirements must comply with the E-Verify mandates to avoid penalties, fines, and potential business license suspensions.

For all states that do not have an E-Verify requirement, it is still strongly recommended that an employer enroll to adhere to best practices.